Supreme Court, U.S.
FILED
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No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

TYRONE DUFF,
Petitioners,

vs.

STATE OF NEVADA, ET.AL.,
Respondent.

On Petition for Writ of Certiorari to the
United States Court of Appeals for the Ninth Circuit

PETITION FOR WRIT OF CERTIORARI

TYRONE DUFF
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QUESTION(S) PRESENTED

1. Whether the Ninth Circuit Court of Appeals entered a decision that not only conflicts the existing authoritative decision by the Second Circuit Court of Appeals in *Maestri v. Jutkofsky* but assumed authority in the jurisdiction of the Second Circuit in order to enter that decision?

2. Whether the Ninth Circuit Court of Appeals entered a decision in violation of the *Nevada Revised Statutes* and conferred jurisdiction where none existed in the State of New York in order to affirm the district court's order and judgment that terminated the Plaintiff's Constitutional and Civil Rights without legal justification by declaring him a vexatious litigant?

PARTIES TO PROCEEDING

All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

Tyrone Duff; *Plaintiff/Appellant/Petitioner*

State of Nevada, Justice James W. Hardesty, Justice Robert E. Rose, Justice A.William Maupin, Justice Mark Gibbons, the Law Firm of Lemons, Grundy and Eisenberg, David R. Grundy, Esq., Alice Campos Mercado, Esq. and A.Stanyan Peck, Esq.; *Defendants/Appellees/ Respondents*

CORPORATE DISCLOSURE STATEMENT

No parties are corporations, Sup. Ct. R. 29.6

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IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the memorandum and the judgment of the United States Court of Appeals for the Ninth Circuit in this case that violated the *Nevada Revised Statutes* and conflicts with the existing authoritative decision of the United States Court of Appeals for the Second Circuit in *Maestri v. Jutkofsky* that substantially affects a rule of national application, where there is now an overriding need for national uniformity.

OPINIONS BELOW

The opinions of the United States Court of Appeals for the Ninth Circuit (Pet. App. 1a–3a) is located at 2006 U.S. App. Lexis 30877 and are not for publication. The order of the court of appeals denying rehearing *en banc* (Pet. App. 29a) is unpublished. The opinions of the United States District Court, District of Nevada (Pet. App. 4a–21a) is located at 3:05-cv-0131-KJD-VPC Duff v. Gibbons.

JURISDICTION

The memorandum and judgment of the United States Court of Appeals were entered on December 13, 2006. A timely petition for rehearing *en banc* was denied by the United States Court of Appeals for the Ninth Circuit on February 21, 2007. The jurisdiction of this Court is invoked under *28 U.S.C. §1254(1).*

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Sixth Amendment provides in pertinent part: "to be informed of the nature and cause of the accusations . . . to be confronted with the witness against him . ." U.S. Const. amend. VI

The Thirteenth Amendment provides in pertinent part: "Involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction." U.S. Const. amend. XIII

The Fourteenth Amendment provides: "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." U.S. Const. amend. XIV, § 1.

Title 42, Section 1983 of the United States Code provides in pertinent part: "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State . , subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress . ." 42 U.S.C. §1983.

Nevada Eighth Judicial District Court Rule (E.D.C.R.) – 5.22(d): An application requesting an extended protective order must be based upon an affidavit(s) setting forth specific facts within the affiant's personal knowledge which justify the issuance of such an order.

Nevada Eighth Judicial District Court Rule 5.22(f): No extended protective order may be renewed beyond the statutory maximum period nor may a new extended order be granted based upon the filing of a new application which does not contain a new and distinct factual basis for the issuance of an order.

Nevada Revised Statues (N.R.S.) – 33.020(1): provided in pertinent part: An extended order for protection against domestic violence must not be granted to the applicant or the adverse party unless he has requested the order and has filed a verified application that an act of domestic violence has occurred or there exists a threat of domestic violence.

Nevada Revised Statute 33.080(3): An extended order expires within such time, not to exceed 1 year, as the court fixes. A temporary order may be converted by the court, upon notice to the adverse party and a hearing into an extended order effective for no more than 1 year.

Nevada Revised Statute 41.031(1) provides in pertinent part: The State of Nevada waives its immunity from liability and action and hereby consents to have its liability determined in accordance with the same rules of law as applied to civil actions against natural persons except as otherwise provided in N.R.S. 41.032 to N.R.S. 41.038.

Nevada Revised Statute 41.0334(2) provides in pertinent part: Exceptions: (a) intentionally caused or contribute to by an officer or employee of the state or any of its agencies or political subdivisions; or (b) resulting from the deprivation of any rights, privileges or immunities secured by the United States Constitution or the constitution of the State of Nevada.

Nevada Revised Statute 41.0337: State or political subdivision to be named party defendant. No tort action arising out of an act or omission within the scope of his public duties or employment may be brought against any present or former: 1) Officer or employee of the state or any political subdivision; 2) Immune contractor; or 3) State legislator, unless the state or appropriate political subdivision is named a party defendant under N.R.S. 41.031.

Nevada Rules of Civil Procedure (N.R.C.P.) – 65(d): Every order granting an injunction and every restraining order shall set forth the reasons for its issuance; shall be specific in terms; shall describe in detail, and not by reference to the complaint or other document, the act or acts sought to be restrained.

STATEMENT OF THE CASE

This case presents extremely important matters that arise from the continuing unlawful restraint of the Petitioner Tyrone Duff (Plaintiff) through the act of coercion that deprived him of his personal liberty guaranteed by *the Thirteenth Amendment* and his liberty of movement and freedom to remain in a place of his lawful choice guaranteed by *the Fourteenth Amendment,* now over 13 years, without due process of law, for a crime or crimes he was never charged with on behalf of, including but not limited to, Kurt Mausert, Esq. in the State of New York, in a blanket restraining order that was never adjudicated but fabricated by A.Stanyan Peck, Esq., which conflicts with the existing authoritative decision by the Second Circuit in *Maestri v. Jutkofsky.*

Plaintiff brought an action for redress under *42 U.S.C. §1983, §1985 and §1986* before the United States District Court, District of Nevada on March 4, 2005, where he

alleged the defendants acted in a conspiracy against his rights to keep him under unlawful restraint, indefinitely, for a nonexistent crime, which caused the deprivation of his constitutional and civil rights, under color of state law.

I. Background History

Plaintiff was deprived his *Sixth Amendment Rights*, when A.Stanyan Peck, Esq. fabricated a blanket restraining order against him for an nonexistent crime, with no expiration dates, in violation of *N.R.C.P. 65(d)*, on behalf of himself - A.Stanyan Peck, Esq., Yolanda Foster, William Henry Foster (a five time convicted ex felon of extremely violent and volatile crimes), Washoe County Social Services Department (an entity of Washoe County entered as a natural person), Richard W. Lewis, PhD. and Kurt Mausert, Esq. and entered it in a child custody matter that excluded the minor children before the family court in Judge Jordan's Findings of Fact, Conclusions of Law and Order (Judgment), July 27, 1993, which is a final decree, in Nevada State Court case no. *D88-1238 Duff v. Duff (Duff v. Duff)*. The blanket restraining order terminated the Plaintiff's personal liberty guaranteed by *the Thirteenth Amendment* and his liberty and freedom guaranteed by *the Fourteenth Amendment*, without due process of law that rendered the Judgment a product of fraud and void under law.

The Washoe County District Attorney's letter, dated April 19, 1999 (Pet. App. 35a), clearly states his office never filed any documents with the court requesting the restraint of the Plaintiff on behalf of Washoe County Social Services Department, in *Duff v. Duff*, which his office represents all departments of Washoe County; produces the fact, the court lacked subject matter jurisdiction for the issuance of the blanket restraining order. The District Attorney letter's established the blanket restraining order

was a fabricated product of A.Stanyan Peck, Esq., where he lacked authority and the court lacked jurisdiction to entered Washoe County Social Services Department in the blanket restraining order, keeping the Plaintiff under unlawful restraint for a nonexistent crime on behalf of an entity.

A.Stanyan Peck, Esq. entered ex felon Foster in the blanket restraining order, who was evaluated and diagnosed by a court appoint psychologist, in *Duff v. Duff*, as an alcoholic and drug addict; and suffers from a severe mixed personality disorder with many narcissistic and paranoid personality characteristics with considerable pathology interwoven throughout his profile. Peck framed the Plaintiff with ex-felon Foster's criminal and psychological profile he entered in the Judgment against him in support the blanket restraining order that barred him from practicing his lawful profession, a licensed Realtor, now over 13 years, depriving him of his livelihood for a nonexistent crime when he tampered with the administration of justice and falsified the Judgment[1].

A.Stanyan Peck, Esq., in October 1995 (Pet. App. 30a), attempted to have the Plaintiff placed under arrest for violating the blanket restraining order, instituting a false criminal prosecution against him for a crime not

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[1] Richard W. Lewis, Ph.D. was found guilty on the Plaintiff's complaint before the Nevada State Board of Psychological Examiners in its Findings of Facts, Conclusions of Law and Order, entered July 20, 1995, of giving false testimony in the hearing held July 6-9, 1993 in *Duff v. Duff*, which is supported by Robert Hiller, Ph.D., Linda Peterson, Ph.D., Jack Mayville, Ph.D., Frank Evart, Ph.D., Dr. Mujahid Rasul (psychiatrist), Elisabeth Nyblade, Ph.D. and Dr. Andrew Pauli (psychiatrist), who have given testimony, affidavits and written reports to the court that the Plaintiff does not suffer from any "psychological disorders" including those A.Stanyan Peck, Esq. entered against him in the Judgment. Lewis never appealed the Board's decision and it has never been overturned. Lewis remains in the blanket restraining order, where A.Stanyan Peck, Esq. declared there were never any documents filed with the court for that restraint.

contemplated by him, where Peck knew the blanket restraining order pursuant to *N.R.S. 33.080(3)* expired by statutory law on July 27, 1994 and therefore was unenforceable.

Judge Jordan's order, filed March 5, 1998 in *Duff v. Duff*, denied the Plaintiff's motion to remove his blanket restraining order against him (Pet. App. 25a) that expired by statutory law on July 27, 1994. Judge Jordan lacked the authority to uphold the blanket restraining order against the Plaintiff on behalf of Kurt Mausert, Esq., when he lacked authority to enforce it in the jurisdiction of the State of New York, where his order, filed December 12, 1994 (Pet. App. 22a) clearly states Kurt Mausert, Esq. relocated to the State of New York.

Kurt Mausert, Esq.'s letter, dated June 21, 1999 (Pet. App. 37a), states he has not been involved in *Duff v. Duff* for nearly five (5) years and all supporting documents for his restraint of the Plaintiff in the State of New York including but not limited to the order of March 5, 1998 would be on file with the Second Judicial District Court of the State of Nevada in and for the County of Washoe and would have been served upon the Plaintiff, who has resided in Bellingham, Washington since May 1994.

Plaintiff subpoenaed A.Stanyan Peck, Esq. in 1999 for all documents in support of 'his personal restraint' of him in the blanket restraining order he entered in the Judgment. Peck filed a motion for protective order/stay all discovery on April 7, 1999, where he declared under penalty of perjury in his affidavit (Pet. App. 32a), there were never any documents filed with the court, pursuant to *N.R.S. 33.020(1)* and *E.D.C.R. 5.22(d)*, requesting the restraint of the Plaintiff in *Duff v. Duff*. Judge Jordan's order, filed May 10, 1999, granted Peck's motion and precluded the Plaintiff from seeking any discovery, whatsoever, in

relation to the blanket restraining order that remains in full force and effect in the Judgment.

Plaintiff brought an action in 1999 in state court against A.Stanyan Peck, Esq. after he declared he never filed any documents with the court for his personal restraint of the Plaintiff and refused to take appropriate action to vacate the Judgment that contained the blanket restraining order, where it expired by statutory law in 1994, which caused the state court to continue to confer jurisdiction where none existed in the State of New York in order to uphold and enforce the blanket restraining order on behalf of Kurt Mausert, Esq.. Peck chose to keep the Plaintiff under unlawful restraint, indefinitely, for a nonexistent crime, continuing the deprivation of his constitutional and civil rights under color of state law, where his withdrawal as the attorney of record on behalf of Ms. Foster is irrelevant as to his liability to the Plaintiff, where his liability continues as long as his name remains in the blanket restraining order that he entered in the Judgment.

Justices James W. Hardesty (previously Judge Hardesty), Robert E. Rose, A.William Maupin and Mark Gibbons (collectively "Justices") assumed authority outside the geographic boundaries of their office in the jurisdiction of the State of New York and upheld and permanently enforced the blanket restraining order against Plaintiff on behalf of, including but not limited to, Kurt Mausert, Esq. that expired by statutory law in 1994, in order to dismiss his complaint against A.Stanyan Peck, Esq. without vacating the Judgment. The Justices knew they could not remove Peck from liability where they could not remove him from the blanket restraining order without vacating the Judgment as void under law, of no legal force or effect. The Justices lacked the authority to order the Plaintiff bound by the results of that blanket restraining order that expired by statutory law in 1994 and where they lacked

authority to uphold and enforce it on behalf of Kurt Mausert. Esq. in the jurisdiction of the State of New York.

II. Procedural History

The district court has jurisdiction for cases that arise under federal law. A claim under *42 U.S.C. §1983* arises under federal law. Plaintiff sued the defendants under *Section 1983* in this action where he alleged they acted in a conspiracy against his rights to keep him under unlawful restraint, indefinitely, for a nonexistent crime that caused the deprivation of his constitutional and civil rights under *Section 1983.*

The district court granted A.Stanyan Peck, Esq., The Law Firm of Lemons, Grundy and Eisenberg, David R. Grundy, Esq. and Alice Campos Mercado, Esq. (LG&E unless identified individually) motion declaring the Plaintiff a vexatious litigant and granted the defendants' motions to stay all discovery pending its disposition on their motions to dismiss that denied the Plaintiff his right to the equal protection of the laws by denying him any discovery, whatsoever, pursuant to *Fed.R.Civ.P. 26(b)*, on an extremely important matter that involves the termination of his personal liberty guaranteed by *the Thirteenth Amendment* and his liberty of movement and freedom to remain in a place of his lawful choice guaranteed by *the Fourteenth Amendment.*

The district court's order and judgment, entered January 5, 2006 (Pet. App. 4a-21a), condoned the Justices' assumption of authority outside the geographic boundaries of their office and upheld the blanket restraining order against the Plaintiff on behalf of Kurt Mausert, Esq. in the jurisdiction of the State of New York, when it granted the defendants' motions to dismiss based on judicial immunity, the State of Nevada's sovereign immunity under *the*

Eleventh Amendment, de facto appeal and *the Rooker/Feldman doctrine.* The district court declared the Plaintiff a vexatious litigant based on the state court denial of his motions in 1995 and 1998, his 1999 state court action, his 2004 federal court action that all denied the removal of the blanket restraining order against him on behalf of, including but not limited to, Kurt Mausert, Esq. in the State of New York that pursuant to *N.R.S. 33.080(3)* expired by statutory law on July 27, 1994, rendering the Judgment unenforceable and void under law.

The Ninth Circuit affirmed the dismissal of the Plaintiff's complaint and held the district court did not abuse its discretion declaring the Plaintiff a vexatious litigant that barred him from ever exercising his constitutional rights to vacate the Judgment in order to remove the blanket restraining order. Pet. App. 1a-3a. Plaintiff timely filed his Petition for Rehearing and Rehearing En Banc to the Ninth Circuit that was denied on February 21, 2007. Pet. App. 29a.

REASONS FOR GRANTING THE PETITION

I. Review is warranted where the Ninth Circuit's decision assumed authority in the jurisdiction of the Second Circuit when it affirmed the district court's order and judgment that conferred jurisdiction in the State of New York that conflicts with the Second Circuit's decision in *Maestri v. Jutkofsky.*

The district court impeached its order and judgment, entered January 5, 2006, where it lacked authority to act when it conferred jurisdiction where none existed in the State of New York, as in *People ex rel. Gowdy v. Baltimore & Ohio R.R. Co.*, 385 Ill. 86, 92, 52 N.E. 2d 255 (1943). The Plaintiff, as in *Maestri v. Jutkofsky,* 850, F.2d 50, 53 (2nd Cir. 1988) [*28] cert. denied, 489, U.S. 1016, 109

S.Ct. 1132, 103 L.Ed. 2d 193 (1989), relied upon the district court to reject the Justices judicial immunity defense, where they knowingly acted in the 'clear absence of all jurisdiction' and unquestionably acted outside the scope of their judicial immunity when they assumed authority outside the geographic boundaries of their office and upheld and permanently enforce the blanket restraining order against the Plaintiff on behalf of, including but not limited to, Kurt Mausert, Esq. in the jurisdiction of the State of New York; is the kind of clear judicial usurpation which cannot be condoned by any grant of judicial immunity. No public policy would be served by granting immunity for such an arrogant excesses of authority.

Maestri is the leading Second Circuit case establishing the test for determining what is 'absence of jurisdiction'. The case makes it quite clear that there is a difference between an action that is 'erroneous' or even in 'excess of jurisdiction' and one that is in 'the clear absence of all jurisdiction over the subject matter' which absolute judicial immunity is unavailable. See *Ashelman v. Pope*, 793, F.2d. 1075 (9th Cir. 1986); *Tucker v. Outwater*, 118 F.3d 930, 932 (2nd Cir. 1997). The Supreme Court held in *Pulliam v. Allen*, 466 U.S. 522 (1984), that judicial immunity does not insulate state judges from claims for equitable relief *42 U.S.C. §1983*. The Justices knew, as in *Rankin v. Howard*, (1980) 633 F.2d 844, cert. den., *Zeller v. Rankin*, 101 S.Ct. 2020, 451 U.S. 939, 68 L.Ed. 2d 326 (1980), when they violated the Nevada Revised Statutes and assumed authority in the jurisdiction of the State of New York, they acted in the face of clearly valid statutes and case law expressly depriving them of jurisdiction, their judicial immunity was lost and they would be liable. *Dykes v. Horsemann*, 743 F.2d 1488 (1984); *Duty v. City of Springdale, Ark.*, 42 F.3d 460, 462 (8th Cir. 1994); *Forrester v. White*, 484 U.S. at 227-228, 98 L.Ed. 2d 555, 108 S.Ct. 538 (1988).

It is extremely clear, when the Justices left the jurisdiction of the State of Nevada and assumed authority in the jurisdiction of the State of New York, any authority exercised is usurped authority, and for the exercise of such authority, when the want of jurisdiction is known to the judge, no excuse is permissible. *Stump v. Sparkman*, 435 U.S. 349, 55 L.Ed. 2d 339, 98 S.Ct. 1099 (1978) (quoting *Bradley v. Fisher*, 13 Wall, 351-352. 20 L.Ed. 646 (1872)). The United States Supreme Court in, *Scheuer v. Rhodes*, 416 U.S. 232, 94 S.Ct. 1683, 1687 (1974) held "when a state officer acts under a state law in a manner violative of the Federal Constitution, he "comes into conflict with the superior authority of that Constitution and he is in that case stripped of his official or representative character and is subject in his person to the consequences of his individual conduct. The State has no power to impart to him any immunity from responsibility to the supreme authority of the United States."

The district court held the Plaintiff cannot pierce the Justices' judicial immunity, citing *Ashelman*, 793 F.2d at 1074-77. The Justices pierced not only their judicial immunity but the State of Nevada's sovereign immunity provided under *the Eleventh Amendment*, when they caused the Nevada State Court and the Supreme Court of Nevada to act where they lacked the inherent power to act in the jurisdiction of the State of New York in order to uphold and enforce the blanket restraining order on behalf of Kurt Mausert, Esq.. A judge only has authority within the geographic boundaries of the jurisdiction of the court in which he presides, outside of that jurisdiction the judge is not acting in his judicial capacity, where it is not judicial in nature nor is a judicial function normally performed by a judge to assume authority in the jurisdiction of another state. See *Ableman v. Booth*, 62 U.S. 514 (1859); *Bradley v. Fisher*, 80 U.S. 355 (1872); *Stump v. Sparkman*, 435 U.S. 349 (1978).

In such cases the judge has lost his judicial function, has become a mere private person, and is liable as a trespasser for damages resulting from his unauthorized acts. Where there is no jurisdiction there is no judge; the proceeding is nothing. Such has been the law from the days of the Marchalsea, 10 Coke 68; *Bradley v. Fisher*, 13 Wall 355, 351. *Manning v. Ketcham*, 58 F.2d 948 (1932).

The district court held, "a suit against a governmental official in his official capacity is equivalent to a suit against the governmental entity itself. *Larez v. City of Los Angeles*, 946 F.2d 630, 646 (9th Cir. 1991). By suing the justices in their official capacities, the Plaintiff is essentially suing the State of Nevada. Under *N.R.S. 41.031 (1), N.R.S. 41.0334(2)(a)(b)* and *N.R.S. 41.0337(1)(2)(3)* describes in detail conditions and limitations on a *Section 1983* action against the State of Nevada. In Kentucky v. Graham, 473 U.S. 159, 165 (1985)(quoting *Monell v. New York City Dept. of Social Services*, 436 U.S. 658, 690, n.55 (1978)), held "an official-capacity suit is typical way in which we have held states responsible for their duties under federal law. Such suit, "general represent[s] only another way of pleading action against an entity of which an officer is an agent. See *Pennhurst State School and Hospital v. Halderman*, 465 U.S. 89, 101 (1984). This is further explained in *Will v. Michigan Dept. of State Police*, 491 U.S. 58, 59 (1989).

Prospective relief awarded against a state official also "implicate [s] *Eleventh Amendment* concerns," Green v. Mansour, 474 U.S. 64, 68 (1985), the interest in "end [ing] a continuing violation of federal law," *ibid.*, outweigh the interests in state sovereignty and justify an award under 1983 of an injunction that operates against the State's officers or even directly against the State itself. *Papasan v. Allain*, 478 U.S. 265, 278, 282 (1986); *Milliken v. Bradley*, 433 U.S. 267, 289 (1977). Justices Powell stated in his

opinion concurring in the judgment, in *Milliken v. Bradley supra*, "the State had been adjudged a participant in the constitutional violations, and the State therefore may be ordered to participate prospectively in a remedy otherwise appropriate." *Id.* at 295.

The Ninth Circuit acted where it lacked the inherent power to act in the jurisdiction of the Second Circuit when it affirmed the district court's order and judgment that conferred jurisdiction where none existed in the State of New York and upheld and enforced the blanket restraining order on behalf of Kurt Mausert, Esq. that pursuant to *N.R.S. 33.080 (3)* expired by statutory law in 1994.

II. The Ninth Circuit decision violated the Nevada Revised Statutes and conferred jurisdiction where none existed in the State of New York in order to affirm the district court's abuse of discretion in its order and judgment that declared the Plaintiff a *vexatious litigant*.

The district court abuse its discretion in order to declare the Plaintiff a vexatious litigant, where it knew Judge Jordan's order, filed December 12, 1994 in *Duff v. Duff*, clearly stated Kurt Mausert, Esq. relocated to the State of New York, therefore it was legally impossible for the state court in 1995, 1998, 1999 and the federal court in 2004 and in the instant case in 2006 to have subject matter jurisdiction for the restraint of the Plaintiff on behalf of Kurt Mausert, Esq. without conferring jurisdiction where none existed in the State of New York and acting in direct violation of the *Nevada Revised Statutes*, where the blanket restraining order expired by statutory law in 1994. Where there is no jurisdiction, there can be no discretion, for discretion is incident to jurisdiction. *Piper v. Pearson*, 2 Gray 120, cited in *Bradley v. Fisher*, 13 Wall 335, 20 L.Ed. 646 (1872). The court held that "[a] judgment, order or

decree entered by a court which lacks jurisdiction of the parties or the subject matter, or which lacks the inherent power to make or enter the particular order involved, is void." *R.W. Sawant & Co. v. Allied Programs Corp.*, 111 Ill. 2d 304, 309, 489 N.E. 1360 (1986). The duty to vacate a void judgment is based on the inherent power of a court to expunge from its records void acts of which it has knowledge. *People v. Childs*, 278 Ill. App. 3d 65, 663 N.E. 2d 161 (4th Dist. 1996). The district court had a judicial duty to vacate the Judgment as unconstitutional and set the Plaintiff at liberty and hold those liable for that deprivation.

At no given time since A.Stanyan Peck, Esq. declared he had no documents to support the blanket restraining order against the Plaintiff, for over thirteen (13) years (which is confirmed by the Washoe County District Attorney), has he nor LG&E nor the Justices taken the appropriate action to correct the wrong against the Plaintiff and remove the unlawful restraint for a nonexistent crime by vacating the Judgment and setting him at liberty. Instead the district court continued that deprivation of the Plaintiff's constitutional and civil rights, under color of law, by declaring him a vexatious litigant in order to remove the liability from the defendants and barred him from ever exercising his constitutional right to remove the unlawful restraint against him. *Adickes v. S.H. Kress & Co.*, 398 U.S. 144 (1970); *United States v. Price*, 383 U.S. 787, 794 (1966). The district court knew where the Plaintiff has never been charged with a crime, it is legally impossible for him to be convicted of one and now denied him his constitutional rights to proceed with an action to remove the blanket restraining order by vacating the Judgment as unconstitutional and void under law, of no legal force or effect. See *In Coy v. Iowa*, 487 U.S. at 1015, 1021 (1988); *Cole v. Arkansas*, 333 U.S. 196 (1948); *Chambers v. Florida*, 309 U.S. 227 (1940).

When the district court denied the Plaintiff his right to the equal protection of the laws by denying him any discovery, pursuant to *F.R.C.P. 26(b)*, it deprived him of his *Sixth Amendment Rights*, where the blanket restraining order not only violated the *N.R.S. 33.080(3), N.R.C.P. 65 (d)* and *E.D.C.R. 5.22(d)* but pursuant to *E.D.C.R. 5.22(f)*, each of the parties listed in it, including A.Stanyan Peck, Esq., would have had to file a new application every year, for thirteen (13) years, which contains a new and distinct factual basis for the restraint of the Plaintiff, had it been issued through due process of law. See *James v. Borg*, 24 F. 3d 20, 24 (9th Cir.), cert. denied, 115 S.Ct. 333 (1994); *Gray v. Raines*, 662 F.2d 569, 571 (9th Cir. 1991). *In re Oliver*, 33 U.S. 257, 68 S.Ct. 499 (1948), it is "the law of the land" no man's life, liberty or property be forfeited as a punishment until there has been a charge fairly made and fairly tried in a public tribunal. See *Ex Parte State of Virginia*, 100 U.S. 399, 346-47 (1879). This is evident where it is legally impossible for the Nevada State Court to have subject matter jurisdiction for the restraint of the Plaintiff on behalf of Kurt Mausert, Esq. in the State of New York.

The *Rooker/Feldman doctrine* bars the lower court "from . . considering issues actually presented to and decided by a state court . ." *Allstate Ins. Co. v. West Va. State Bar*, 233 F.3d 813, 816 (4th Cir. 2000). The Plaintiff's complaint is with merit and states a claim upon which relief can be granted, pursuant to *F.R.C.P. 8(a)* when it has been established by A.Stanyan Peck, Esq., the Washoe County District Attorney, Kurt Mausert, Esq. and the record itself in *Duff v. Duff* that the court lacked jurisdiction over the parties, the entity and the subject matter for issuance of the blanket restraining order, where the judgment is a product of corruption, collusion and/or fraud . . it may be set aside in an appropriate collateral proceeding. See *Restatement (Second) of Judgments* 69-72

(1982); *Griffith v. Bank of New York*, 147 F.2d 899, 901 (CA2) (Clark, J.), cert. denied, 325 U.S. 874 (1945).

The *Rooker/ Feldman doctrine* is only relevant in cases where the state court had jurisdiction over the parties and the subject matter. Here, the defendants have failed to produce any admissible evidence, whatsoever, that the Plaintiff was ever charged with a crime. Where there is no crime, there can be no subject matter jurisdiction for the issuance of the blanket restraining order and the court's finding that it had the power can add nothing to its authority; - it had no authority to make that finding. *People v. Brewer*, 328 Ill. 472, 483 (1928). Conviction of a nonexistent crime results in a void judgment not subject to waiver. *People v. McCarty*, 94 Ill. 2d. 37 (1983).

The *Feldman*, 460 U.S. 462-483 n16 (1983) or *Rooker/ Feldman doctrine* does not preclude a federal district court from exercising jurisdiction under *42 U.S.C. §1983*. Interfere with Civil Rights is a federal crime committed by the state court itself which would have to hear its own case against itself. Jurisdiction is given under *28 U.S.C. §1343 (a)(1)(2)* and *28 U.S.C. §1257*, District Courts have original jurisdiction over civil actions, or those based on deprivation of rights. Actions involving deprivation of rights under color of authority are within the jurisdiction of the Federal Court and is given under *28 U.S.C. §1343(a) (3)*. The District Courts have original jurisdiction of any civil action to redress that deprivation, under color of state law, of any Constitutional or Congressional act providing for equal rights of citizens or persons within the United States jurisdiction.

Under 42 U.S.C. §1985(2), which proscribes conspiracies depriving persons of rights or privileges including the right to equal protection of the laws. *Federal Civil Rights Act* (2d Ed) ss 276-277. *Under 42 U.S.C.*

§1985(3), which also proscribes conspiracies depriving person of rights or privileges including the right to equal protection of the laws, and *Bray v. Alexandria Women's Health Clinic*, 506 U.S. 263, 122 (1993). "To maintain an action under *(42 USC) 1983*, it is not necessary to allege or prove that the defendants intended to deprive Plaintiff of his Constitutional Rights or that they acted willfully, purposely, or in furtherance of a conspiracy . . it is sufficient to establish that the deprivation . . was the natural consequences of Defendants acting under color of law . ." *Ethridge v. Rhodos*, D.C. Ohio 268 F. Supp. 83 (1967); *Whirl v. Kern*, CA 5 Texas 407 F. 2d 781 (1968); *Ury v. Santee*, 303 F. Supp. 119 (N.D. Ill. 1969).

The district court held the Plaintiff's complaint was frivolous and has harassed the defendants, where he has only taken legal action provided under law to remove the unlawful restraint against him that has continued to deprive him of his federal constitutional rights, now over thirteen (13) years, of "personal liberty that consist in the power of locomotion without imprisonment or restraint" and "liberty" of movement and "freedom" to remain in his place of his lawful choice without the constant threat of false arrest and false imprisonment and that the overt acts of the defendants, under color of state law, has caused that deprivation. *Santiago v. Philadelphia* (1977, DC Pa.) 435 F. Supp. 136.

The district court acted against the Plaintiff's rights, under color of law, to remove the liability of the defendants when it conferred jurisdiction where none existed in the State of New York and upheld and enforced the blanket restraining order that expired by statutory law in 1994 in order to declare him a vexatious litigant and keep him under unlawful restraint indefinitely that terminated his personal liberty through the act of coercion, which is a condition of involuntary servitude without due process of

law, prohibited by *the Thirteenth Amendment,* in which the Ninth Circuit affirmed and if left unchanged overturns *Maestri v. Jutkofsky* and grants the United States District Court, District of Nevada the power to act in the face of clearly valid statutes and case law expressly depriving it of jurisdiction and exercise its authority in the jurisdiction of any state. The Eleventh Circuit held in *Rowe v. Fort Lauderdale*, 2002 U.S. App. 885, *19n. 10, 15 Fla. Weekly Fed. At C241 n.10 (11th Cir. 2002), "Case law is not always necessary to clearly establish a right. A right may be so clear from the text of the constitution or federal statute that no prior decision is necessary to give clear notice of it to an official. Also, a general constitutional rule set out in preexisting case law may apply with obvious clarity to the specific circumstances facing the official. The official's conduct may be so egregious that an objective and reasonable official must have known it was unconstitutional even without any fact-specific case law on point."

CONCLUSION

This Court should grant a writ of certiorari, where the Ninth Circuit's decision not only conflicts with the existing authoritative decision by the Second Circuit's in *Maestri v. Jutkofsky* but violated the *Nevada Revised Statutes* and confer jurisdiction where none existed in the State of New York in order to declare the Plaintiff a vexatious litigant, terminating his constitutional and civil rights without legal justification.

Respectfully Submitted,

Tyrone Duff
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(360) 752-1775

APPENDIX A – MEMORANDUM * OF THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT FILED AND ENTERED DECEMBER 13, 2006

NOT FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 06-15279
D.C. No. CV-N-05-0131-KJD

TYRONE DUFF,
Plaintiff – Appellant,

v.

MARK GIBBONS; et.al.,
Defendants – Appellees.

Appeal from the United States District Court
for the District of Nevada
Kent J. Dawson, District Judge, Presiding

Submitted December 4, 2006 **

Before: GOODWIN, LEAVY, and FISTHER,
Circuit Judges

Tyrone Duff appeals pro se from district court's order dismissing his action and declaring him a vexatious

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. See Fed.R.App.P. 34(a)(2).

litigant. We have jurisdiction 28 U.S.C. §1291. We review de novo the district court's dismissal order, *Ignacio v. Judges of U.S. Court of Appeals for Ninth Circuit*, 453 F.3d 1160, 1165 (9th Cir. 2006), and review for abuse of discretion the order declaring Duff a vexatious litigant, *De Long v. Hennessey*, 912 F.2d 1144, 1146 (9th Cir. 1990). We affirm.

A review of Duff's complaint "reveals it as yet another attempt to attack collaterally the [state] court determination." *Ignacio*, 453 F.3d at 1165. Accordingly, the district court properly dismissed the action for lack of subject matter jurisdiction. *See id.* at 1165.

Contrary to Duff's contention, the district court did not abuse its discretion by staying all discovery pending resolution of the defendants' motions to dismiss. *See Wood v. McEwen*, 644 F.2d 797, 801 (9th Cir. 1981)(per curiam).

We find no abuse of discretion in the district court's order declaring Duff a vexatious litigant. The district court cited other federal and state actions filed by Duff arising out of the same state divorce and custody proceedings and found that Duff used the courts to harass defendants, and the order was narrowly tailored to prevent Duff from filing new actions based on the 1993 state court restraining order and subsequent related state and federal court actions. See De Long, 912, F.2d at 1147 (describing guidelines for vexatious litigant orders).

Duff's remaining contentions lack merit.

AFFIRMED.

APPENDIX B – JUDGMENT OF THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT FILED AND ENTERED DECEMBER 13, 2006

No. 06-15279
D.C. No. CV-N-05-0131-KJD

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

TYRONE DUFF,
Plaintiff – Appellant,

v.

MARK GIBBONS; et.al.,
Defendants – Appellees.

Appeal from the United States District Court for the District of Nevada (Reno).

This cause came on to be heard on the Transcript of the Record from the United States District Court for the District of Nevada (Reno) and was duly submitted.

On consideration whereof, it is now here ordered and adjudged by this Court, that the judgment of the said District Court in this case be, and hereby is **AFFIRMED**.

Filed and entered 12/13/06

APPENDIX C – ORDER OF THE UNITED STATES DISTRICT COURT, DISTRICT OF NEVADA ENTERED JANUARY 5, 2006

Case No. CV-N-05-0131
Hon. Kent J. Dawson

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

TYRONE DUFF,
Plaintiff,

v.

STATE OF NEVADA, JUSTICE JAMES HARDESTY, JUSTICE ROBERT E. ROSE, JUSTICE A.WILLIAM MAPUIN, JUSTICE MARK GIBBONS, A.STANYANT PECK, ESQ., THE LAW FIRM OF LEMONS, GRUNDY AND EISENBERG, DAVID R. GRUNDY, ESQ., ALICE CAMPOS MERCADO, ESQ. and Does 1 through 20,
Defendants.

DATED: January 5, 2006

Presently, the Court has before it Defendants A.Stanyan Peck, Lemons, Grundy & Eisenberg ("LG&E"), David R. Grundy and Alice Campos Mercado's (collectively "Defendant Attorneys") Motion to Dismiss (#9) and the Motion to Dismiss (#11) of Defendants Judge James W. Hardesty, Justice Robert E. Rose, Justice A.William Maupin, and Justice Mark Gibbons (collectively "Defendant Justices") and the State of Nevada on relation of the Second Judicial District Court and the Nevada Supreme Court. Plaintiff filed responses in opposition (#15, 23), to which Defendants replied (#25, 35).

Also before the Court is Defendant Peck's Motion to Declare Plaintiff Tyrone Duff a Vexatious Litigant (#26). Plaintiff filed a response in opposition (#30), to which Defendant Peck replied (#31).

The Court has also considered Plaintiff's recently filed "Motion to Vacate United States District Judge Kent J. Dawsons' Order (Doc.#54) Filed October 6, 2005 and Entered October 19, 2005 (#55) and "Motion to Vacate the Order (Doc.#53)" (#56).

I. Background.

Plaintiff and his former wife, Yolanda, were divorced in December 1988. They were both granted joint legal custody of their minor children with Yolanda denoted as primary physical custodian of them. Defendant A.Stanyan Peck began his representation of Yolanda at this time. On December 23, 1998, Yolanda began a romantic relationship with William Foster, whom she later married in 1989. Due to Mr. Foster's criminal history, Plaintiff sought a change in custody. On January 25, 1989, the state court issued a restraining order prohibiting Mr. Foster from visiting the children while they were in Yolanda's custody and modifying the divorce decree to give the parties alternating weeks of physical custody. Following a hearing in September 1989, the state court dissolved the restraining order and returned primary physical custody to Yolanda. In October 1990, Plaintiff and his new wife, Linda, accused Yolanda and Foster of sexually abusing the minor children. In November 1990, an ex parte temporary restraining order was issued against Yolanda and Foster and the minor children were placed in Plaintiff's custody. In February 1991, Yolanda was granted visitation on the condition that Foster not be in the children's presence. This temporary restraining order, Yolanda's visitation and Plaintiff's temporary custody of the children remained in place until

July 9, 2003.

From July 5-8, 1993, the state court conducted hearings on several motions concerning custody and visitation. Defendant Peck again represented Yolanda, Plaintiff appeared pro se, and Kurt Mausert represented the children as court-appointed counsel. The state court heard testimony from various professionals, including psychologists and social workers. After a four day hearing, the state court entered its "Findings of Fact, Conclusions of Law and Order." The state court found that allegations of sexual abuse asserted against Mr. Foster were unsubstantiated but allegations of sexual abuse by Linda Duff's nephew had been confirmed. The state court further found that Plaintiff suffered from mixed personality disorder with many narcissistic and paranoid personality characteristics; that Plaintiff was physically and economically impaired as a result of stress and his substantial intake of prescription medications; and that Plaintiff's testimony was unreliable and motivated by a rage against Yolanda and Mr. Foster. The state court awarded full legal and physical custody of the minor children to Yolanda and ordered that Plaintiff's visitation rights be suspended pending a receipt of "appropriate psychological therapy." Additionally, the state court issued a restraining order (hereinafter "1993 restraining order") against Plaintiff, prohibiting him from coming within 500 yards of Yolanda, Foster, Washoe County Social Services, the offices of any of the children's treating therapists and their lawyer, Kurt Mausert, as well as the offices of psychologist Richard Lewis and Defendant Peck.[1] Plaintiff did not file an appeal.

In 1995, Plaintiff, now with attorney Martin Crowley, sought to have the restraining order dissolved. Yolanda, again represented by Peck, opposed the motion. The state court denied the motion on October 18, 2005. Defendant

Peck ended his representation of Yolanda in August 1996. In October 1997, Plaintiff again moved to dissolve the restraining orders. On March 5, 1998, the state court again denied Plaintiff's motion.

On May 28, 1999, Plaintiff filed a complaint against Defendant A.Stanyan Peck in the Second Judicial District Court of the State of Nevada (hereinafter "1999 action" or "1999 state court action"). In this 1999 action, Plaintiff alleged claims for malicious prosecution, fraud, perjury, defamation, conflict of interest, violation of constitutional rights, and intentional infliction of emotional distress. Plaintiff premised these claims on the assertion that the 1993 restraining order was illegally obtained and was the product of a conspiracy. Peck, who was represented by David Grundy of LG&E, subsequently filed a motion to dismiss. In granting this motion, Judge Hardesty [2] found the Plaintiff's claims were (1) not legally cognizable; (2) not provable under the pleaded facts; (3) barred by the doctrine of res judicata; and (4) barred by the statute of limitations. Based on this order, Plaintiff alleges that Justice Hardesty "participated in the conspiracy and fraud upon the court" to deprive the Plaintiff of his constitutional rights. Plaintiff filed an appeal. Alice Campos Mercado of LG&E represented Peck on appeal. In February 2002, Justices Rose, Maupin and Gibbons filed their order affirming the dismissal of Plaintiff's 1999 state court action. On March 4, 2003, the Nevada Supreme Court summarily denied rehearing. Based upon these two orders, Plaintiff alleges that Justice Maupin, Rose and Gibbons

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[1] A more detailed version of what occurred between 1989 and 1993 concerning Plaintiff and Yolanda's protracted custody and visitation litigation can be found in Foster v. Washoe County, 114 Nev. 936, 964 P.2d 788 (1998), Duff v. Lewis, 114 Nev. 564, 958 P.2d 82 (1998), and Duff v. Foster, 110 Nev. 1306, 885 P.2d 589 (1994).

[2] As James Hardesty now sits on the Nevada Supreme Court, the Court will from hereinafter refer to him as Justice Hardesty.

became participants in the conspiracy to deprive him of his constitutional rights.

Plaintiff did not appeal the Nevada Supreme Court's decision to the United States Supreme Court. Instead, on February 12, 2004, Plaintiff filed a complaint in this Court, case no. 3:04-cv-00059-LRH-RAM (hereinafter "2004 federal court action"). In the 2004 federal court action, Plaintiff alleged claims against Peck, the State of Nevada, Washoe County, several lawyers, social workers, psychologist and their spouses. Plaintiff's 2004 federal court action was a repeat of the claims he asserted in the state court actions but now couched in terms that purported to seek relief under 42 U.S.C. §1983, 1985 and 1986. At the inception of the case, Plaintiff sought the recusal of Magistrate Judge McQuaid arguing that his "very appearance in the Plaintiff's complaint prejudices this Court against Plaintiff's right and is an obstruction of justice." This motion was apparently based upon Judge McQuaid presiding over another action in which Plaintiff was involved. Finding no legal basis for the motion, the Court denied the motion. Plaintiff then filed a motion for reconsideration in which he accused Judge McQuaid and Judge Reed of conspiracy, fraud and obstruction of justice of justice, among other things, and accused Judge Hicks of bias. The Court denied Plaintiff's motion. Plaintiff again moved for the "immediate recusal and disqualification of Judge Hicks and Judge McQuaid." Plaintiff alleged that these judges were biased and that the district court conspired with the defendants' attorney and committed fraud on the court to keep the plaintiff in "involuntary servitude." The Court again denied the motion.[3] The defendants in the 2004 federal court action eventually

[3] In the 2004 federal court action, Plaintiff has recently made allegations that a deputy clerk has engaged in misconduct by illegally tampering with his pleadings.

moved for dismissal. The Court granted all of the defendants' respective motions to dismiss. Plaintiff appealed to the Ninth Circuit where his appeal is currently pending.

Notwithstanding this appeal, Plaintiff filed the instant action on March 4, 2005. Plaintiff asserts claims for conspiracy to deprive him of his constitutional rights, intentional infliction of emotional distress and defamation. Each of these claims are premised upon the issuance of the allegedly, conspiratorial 1993 restraining order. This time, in addition to Peck, Plaintiff has asserted claims against LG&E, two of its attorneys who successfully defended Peck, and the state court judges who ruled against him. [4] All Defendants have now moved for dismissal.

II. Analysis.

A motion to dismissal pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure attacks whether the court has subject matter jurisdiction over the plaintiff's complaint. See Fed.R.Civ.P. 12(b)(1). A Rule 12(b)(1) attack on jurisdiction can either facial, confining the inquiry to allegations in the complaint, or factual, permitting the court to look beyond the complaint. See Savage v. Glendale Union High Sch., 343 F.3d 1036, 1040 n.2 (9th Cir. 203). In a facial attack, the defendant asserts that the allegations contained in a complaint are insufficient on their face to invoke federal jurisdiction. See Wolfe v. Strankman, 392 F.3d 358, 362 (9th Cir. 2004). In a facial attack, the court assumes the complaint's allegations to be true and draws all reasonable inferences in the plaintiff's favor. See id. By contrast, in a factual determination, the

[4] In the instant action, Plaintiff has also alleged that Magistrate Judge Cooke obstructed justice when she stayed discovery pending the Court's disposition of the Defendants' motions to dismiss.

truth of the allegations are disputed which, by themselves, would otherwise invoke federal jurisdiction. See id. By contrast, in a factual attack, the defendant disputes the truth of the allegation that, by themselves, would otherwise invoke federal jurisdiction. See id. During a factual attack on jurisdiction, the court need not presume the truthfulness of the plaintiff's allegations. See Safe Air for Everyone v. Meyer, 373 F.3d 1035, 1039 (9th Cir. 2004).

A dismissal for failure to state a claim pursuant to Rule 12(b)(6) is a ruling on a question of law. See Clegg v. Cult Awareness Network, 18 F.3d 752, 754 (9th Cir. 1994). In reviewing a Rule 12(b)(6) motion, the Court "must construe the complaint in the light most favorable to the plaintiff and must accept all well-pleaded factual allegations as true." Shwarz v. United States, 234 F.3d 428, 435 (9th Cir. 2000). Review is limited to the contents of the complaint. See Sprewell v. Golden State Warriors, 266 F.3d 979, 988 (9th Cir. 2001). All allegations of material fact are taken as true and construed in the light most favorable to the nonmoving party. See id.

A. All Defendants

All Defendants initially argue that the Rooker-Feldman doctrine bars this Court's jurisdiction over Plaintiff's complaint. The Rooker- Feldman doctrine takes its name from Rooker v. Fidelity Trust Co., 263 U.S. 413 (1923) and District of Columbia Court of Appeals v. Feldman, 460 U.S. 462 (1983) and is a statute-based doctrine based on the structure and negative inference drawn from 28 U.S.C. §1331 and 28 U.S.C. §1257. This doctrine bars federal courts from exercising subject matter jurisdiction over a suit that is a de facto appeal from a state court judgment as well as any issues that are raised in the suit which are "inextricably intertwined" with an issue resolved by the state court judicial decision. See Noel v. Hall, 341 F3d

1148, 1158 (9th Cir. 2003).

It is a forbidden de facto appeal under Rooker-Feldman when the plaintiff in federal district court complains of a legal wrong allegedly committed by the state court, and seeks relief from the judgment of that court. See id. at 1163; also see Exxon Mobile Corp. v. Saudi Basic Indus. Corp., 125 S.Ct. 1517, 1521-22 (2005)(holding that the Rooker-Feldman doctrine applies to those cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments). On the other hand, where the federal plaintiff complains of a legal injury caused by an adverse party, rather than a legal caused by a state court judgment, Rooker-Feldman does not bar jurisdiction. See Noel, 341 F.3d at 1163. Furthermore, "the federal suit is not a forbidden de facto appeal because it is 'inextricably intertwined' with something." Id. at 1158. "Only when there is already a forbidden de facto appeal in federal court does the 'inextricably intertwined' test come into play." Id. Therefore, "[o]nce a federal plaintiff seeks to bring a forbidden de facto appeal, that federal plaintiff may not seek to litigate an issue that is 'inextricably intertwined' with the state court judicial decision from which the forbidden de facto appeal is brought. Id.

Here, Plaintiff's claims as to the State of Nevada (in its relation to Second Judicial District Court and the Nevada Supreme Court) and Justices Hardesty, Rose, Maupin and Gibbons in their official and individual capacities constitute a de facto appeal barred by the Rooker-Feldman doctrine. The fact Plaintiff is not seeking to overturn or vacate the state court decisions does not insulate Plaintiff's complaint from Rooker-Feldman. Plaintiff's complaint seeks monetary damages based on the rulings of the state

courts. Throughout his complaint, Plaintiff alleges misconduct and unlawful rulings on the part of the state court justices and claims a legal injury as a result of these rulings. By alleging that these state court justices participate in the conspiracy to deprive him of his constitutional rights by issuing the unconstitutional orders, Plaintiff necessarily implies the orders' invalidity. Thus, Plaintiff effectively seeks appellate review of the decisions of the state district court as well as the Nevada Supreme Court. See Noel, 341 F.3d at 1163; see also Maldonado v. Harris, 370 F.3d 945, 950 (9th Cir. 2004)(finding that Rooker-Feldman does not apply because the legal wrong plaintiff alleged was not an erroneous state court decision but continued enforcement by a state agency); accord Edwards v. Balisok, 520 U.S. 641 (1997)(finding that habeas relief was the sole vehicle for the prisoners' constitutional challenge notwithstanding that he was only seeking declaratory relief and monetary damages, because the principle procedure defect complained of, namely deceit and bias on the part of the decisionmaker, would, if established, necessarily imply the invalidity of the deprivation of the prisoner's good-time credits).[5] Moreover, Plaintiff's claims constitute a de facto appeal because Plaintiff directly challenges the state court's factual and legal conclusions,. See, e.g. Manufacture Home Communities, Inc. v. City of San Jose, 420 F.3d 1022, 1030 (9th Cir. 2005). Not only does Plaintiff assert legal errors in the orders the Defendants state court justices entered but also in the 1993 restraining order which underlies every complaint Plaintiff has filed in this Court as well as in the 1999 state court action.

Because Plaintiff's claims against the State of Nevada and the Defendant Justices constitutes a de facto appeal, the Court must decide whether Plaintiff's claims against the remaining Defendant Attorneys fall under the "inextricably intertwined" test. The Court finds that they do. Plaintiff

alleges a grand conspiracy of which the State of Nevada, state court justices and certain attorneys deprive him of constitutional rights. This allegation of a conspiracy alone renders Plaintiff's claims against the remaining Defendant Attorneys inextricably intertwined with the claims against the State of Nevada and the Defendant Justices. Moreover, to rule on Plaintiff's claims against the Defendants Attorneys would implicate and involve the same claims Plaintiff has against the State of Nevada and Defendant Justices. Thus, Rooker-Feldman bars Plaintiff's claims against all Defendants.

B. State of Nevada

The State of Nevada additionally argues that Plaintiff has failed to state a claim against it because such a claim would be barred pursuant to the Eleventh Amendment. The Eleventh Amendment to the United States Constitution states, "The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States

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[5] The situation wit Plaintiff's complaint is analogous to the situation in Heck v. Humphrey, 512 U.S. 477 (1994). In Heck, a prisoner brought a §1983 action for damages against certain county prosecutors and a police investigator who, the prisoner alleged, had unconstitutionally caused his conviction by improperly investigating his crime and destroying evidence. See id. at 479. Heck held that where establishing the basis for the damages claim necessarily demonstrates the invalidity of the conviction, a §1983 action will not lie unless the conviction or sentence has already been invalidated. See id. at 481-82, 487. (Notably, Heck cited the Rooker decision in support of its claim that the Supreme Court "has long expressed similar concerns for finality and consistency and has generally declined to expand opportunities for collateral attack.") Plaintiff's instant complaint is essentially a collateral attack on the state court decisions. While Heck and its progeny sought the practical objective of preserving limitations of the availability of habeas remedies, here, Rooker-Feldman seeks to enforce the limited jurisdiction Congress accorded federal district courts.

by Citizens of another State, or by Citizens of Subjects of any Foreign State." Although the Eleventh Amendment does not explicitly prohibit an action against a state or its instrumentalities by one of its own citizens, the Supreme Court has construed the amendment as barring such suits. See Premo v. Martin, 119 F.3d 764, 768 (9th Cir. 1997)(citing Hans v. Louisiana, 134 U.S. 1, 10 (1890)). There are two well-recognized exceptions to Eleventh Amendment immunity: Congress can specifically abrogate it, or a state can waive immunity by consenting to suit in federal court. See id. (citing Atascadero State Hosp. v. Scanlon, 473 U.S. 234, 238)). Eleventh Amendment immunity cannot be implied waived. See Coll. Sav. Bank v. Fla. Prepaid Postsecondary Educ. Expense Bd., 527 U.S. 666, 682 (1999). Rather, the state must clearly declare its waiver. See id. at 675-76.

Here, there is no question that the State of Nevada, the Second Judicial District Court and the Supreme Court of Nevada are either the state or instrumentalities of such. Thus, the Eleventh Amendment bars Plaintiff's claims against them unless on of the exceptions applied. Neither one does. The courts have held that Congress did not abrogate the states' Eleventh Amendment immunity when passing the statutes known as 42 U.S.C. §§1983, 1985, 1986. See, e.g., Pennhurst State Sch. & Hosp. v. Halderman, 465 U.S. 89, 99-100 (1984); Cerrato v. S.F. Cmty. Coll. Dist., 26 F.3d 968, 975 (9th Cir. 1994). Additionally, Plaintiff produces no evidence that the State of Nevada has clearly waived its immunity. The Court is unaware of any Nevada statute allowing an individual to file suit in federal court alleging the claims Plaintiff does.

Additionally, Plaintiff's §1983 claims against the State of Nevada, the Second Judicial District Court, and the Nevada Supreme Court fail. To state a claim under §1983, a plaintiff must allege the violation of his constitutional

or civil rights "by a person acting under color of State law." West v. Atkins, 487 U.S. 42, 48 (1988). The Supreme Court has found that neither nor their agencies are "persons" for §1983 purpose. See Will v. Michigan Dept. of State Police, 491 U.S. 58, 71 (1989). Accordingly, Plaintiff's claims against the State of Nevada, the Second Judicial District Court and the Supreme Court of Nevada are not cognizable under §1983.

C. Justices Hardesty, Rose, Maupin and Gibbons.

Plaintiff alleges claims against these justices in both their individual capacities. To the extent Plaintiff brings claims against these justices in their official capacities, these claims fail. A suit against a governmental official in his official capacity is equivalent to a suit against the governmental entity itself. See Larez v. City of Los Angeles, 946, F.2d 630, 646 (9th Cir. 1991). By suing the justices in their official capacities, Plaintiff is essentially suing the State of Nevada. As discussed previously, the Eleventh Amendment bars Plaintiff's claims against the state.

The Defendant Justices argue that Plaintiff's claims against them in their individual capacities are barred pursuant to the doctrine of judicial immunity. The Court agrees. A judge is generally immune from a suit for money damages. See Stump v. Sparkman, 435 U.S. 349 (978); also see Mireles v. Waco, 502 U.S. 9, 9 (1991). Even if the offending action was in error, was done maliciously or was in the excess of his authority, a judge still retains his immunity. See Stump, 435 U.S. at 356. Moreover, judicial immunity is not affected by the motives with which a judge's judicial acts are performed. See Ashelman v. Pope, 793 F.2d 1072 (9th Cir. 1986). However, a judge's immunity for monetary damages is overridden in two circumstances: (1) actions not taken in the judge's judicial

capacity; and (2) actions, although judicial in nature, taken in the complete absence of all jurisdiction. See Mireles, 502 U.S. at 11-12.

Here, the underlying actions of which Plaintiff complains are clearly judicial. Justice Hardesty's order granting Defendant Peck's motion to dismiss in the 1999 state court action and Justices Rose, Maupin and Gibbons' order affirming the dismissal are clearly judicial actions. (Additionally, the 1993 restraining order and the 1998 order refusing to dissolve it are also clearly judicial acts.) Accordingly, to pierce these Defendant Justices' judicial immunity, Plaintiff must show they acted in complete absence of all jurisdiction. Plaintiff has failed to show this. Despite Plaintiff's conclusory allegations to the contrary, the Defendant Justices did not act in the complete absence of jurisdiction. It was Plaintiff who chose to file his 1999 action in the Second Judicial District Court. Justice Hardesty ruled on a motion to dismiss which was clearly within his jurisdiction. His ruling was based on issues of law, to wit: res judicata and statute of limitations. Unhappy with this result, Plaintiff then appealed Justice Hardesty's order to the Nevada Supreme Court. Justices Rose, Maupin and Gibbons reviewed Justices Hardesty's rulings and affirmed. This affirmance was clearly within Nevada Supreme Court's jurisdiction. [6] Finally, the fact Plaintiff alleges that the justices participated in a conspiracy does not deprive them of their judicial immunity. See Ashelman, 793 F.2d at 1078.

D. Motion to Declare Plaintiff a Vexatious Litigant.

In his motion, Defendant Peck seeks an order declaring Plaintiff a vexatious litigant and preventing him from filing any further lawsuits based upon this case as well as the family court actions. Courts have the power to enjoin vexatious litigants from filing future frivolous,

unsubstantiated, harassing actions. See DeLong v. Hennessey, 912 F.2d 1144, 1146-47 (9th Cir. 1990). Before issuing such a restrictive order a court must follow four guidelines: (1) Plaintiff must be given adequate notice to oppose a restrictive pre-filing before it is entered; (2) the court must present an adequate record for review by listing the case filings that support its order; (3) the trial court must make substantive findings as to the frivolous or harassing nature of Plaintiff's filings; and (4) the order must be narrowly tailored to remedy Plaintiff's particular abuses. See id. at 1148-49. The Court finds that a restrictive pre-filing order is warranted.

First, the due process requirements have been satisfied by the filing of the motion and the opportunity Plaintiff had in opposing it. Second, the record demonstrates that Plaintiff has abused the judicial system. Plaintiff has filed two complaints within twelve months in this Court alone. He has also moved to reconsider each order that he deemed unfavorable to him. The most cursory review of these cases (as well as the 1999 state court action) reveals that Plaintiff makes reckless accusations of conspiracy and fraud against anyone who disagrees with his view, including members of this Court. Plaintiff's abuse of the judicial system is further evidenced by the complaints he

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[6]Plaintiff cannot pierce the Defendant Justices judicial immunity by arguing that their orders implicitly approved of the 1993 restraining order, which order was issued in clear absence of all jurisdiction. Plaintiff has failed to show that the 1993 restraining order (and the 1995 and 1998 orders refusing to dissolve the 1993 restraining order) was issued in complete absence of authority. Despite Plaintiff's arguments to the contrary, a family court judge has the authority to issue a restraining order, as well as modify custody and visitation orders. See Nev. R. Stat. 3.223 & 3.006. Plaintiff's allegations concerning the 1993 restraining order at most demonstrate that the underlying state court may have acted in excess of jurisdiction. An act taken in excess of jurisdiction, however does not pierce a judge's judicial immunity. See Stump, 435 U.S. at356.

filed in state court. Plaintiff's 1999 state court action against Defendant Peck raised the exact same issues that he has raised now. His 1999 action was dismissed by a state district court and affirmed on appeal by the Nevada Supreme Court. Showing a complete disregard for the judicial process, Plaintiff simply ignored the findings of the state courts and filed another lawsuit in this Court alleging a grand conspiracy and an illegal restraining order. Plaintiff has not been litigious but his repeat filings have also been legally without merit. Each of these frivolous actions have resulted in undue burden and expense on the named Defendants.

Third, the record in this case supports the filing the Plaintiff's claims have not only been frivolous but also harassing. For example, Defendant Peck was the attorney for Plaintiff's ex wife, Yolanda. In the course of Peck's representation of Yolanda, Plaintiff lost custody of his children and a restraining order was issued against him. Since then, Plaintiff has aggressively pursued Peck through the litigation process. Plaintiff sued Peck in 1999. The state court orders in that case demonstrated that Plaintiff's claims were legally meritless. Plaintiff then filed another complaint against Peck in 2004. The 2004 federal court action paralleled the 1999 state court action and was based upon the same allegations of conspiracy in the issuance of the 1993 restraining order. Again, Plaintiff's claims were dismissed. Plaintiff then filed an appeal to the Ninth Circuit. While this appeal was pending, Plaintiff filed the instant complaint against Peck. The claims in the instant complaint are substantively no different than the claims in the 1999 state court action or the 2004 federal court action. Plaintiff merely changes the names of the alleged co-conspirators. These actions are strong evidence of harassment.

III. Conclusions.

Plaintiff's instant complaint is a de facto appeal of the 1999 state court action. Accordingly, Rooker-Feldman bars Plaintiff's complaint. Additionally, Plaintiff's claims against the State of Nevada and its agencies are barred pursuant to the Eleventh Amendment and these Defendants are not "person" for the purpose of §1983. Finally, Plaintiff's claims against the Defendant Justices are barred under the doctrine of judicial immunity.

Accordingly, IT IS HEREBY ORDERED that Defendant Attorneys' Motion to Dismiss (#9) and the Motion to Dismiss (#11) of Defendants State of Nevada and the Defendant Justices are **GRANTED.**

IT IS FURTHER ORDERED that Defendant Peck's Motion to Declare Tyrone Duff a Vexatious Litigant (#26) is **GRANTED.** Plaintiff is enjoined from filing any new action based on the 1993 state court restraining order, the 1995 and 1998 state court denial of his motion to dissolve the restraining order, his 1999state court complaint (CV99-02906), his 2004 federal court action (3:04-cv-00059-LRH-RAM) or the instant complaint (3:05-cv-00131-KJD-VPC) against the Defendants in this action, or the Defendants named in his 2004 federal court action. This injunction will not bar Plaintiff from perfecting an appeal in this case or from litigating any appeal he may already have against these Defendants.

IT IS FURTHER ORDERED that Plaintiff's "Motion to Vacate United States District Judge Kent J. Dawson's Order (Doc. #54) Filed October 6, 2005 and Entered October 19, 2005" (#55) and "Motion to Vacate the Order (Doc. #53)" (#56) are **DENIED AS MOOT.**

DATED this 5th day of January, 2006.

/s/_____
Kent J. Dawson
United States District Judge

APPENDIX D – JUDGMENT OF THE UNITED STATES DISTRICT COURT, DISTRICT OF NEVADA ENTERED JANUARY 5, 2006

Case No. CV-N-05-0131
Hon. Kent J. Dawson

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

TYRONE DUFF,
Plaintiff,

v.

STATE OF NEVADA, et.al.
Defendants.

JUDGMENT IN A CIVIL CASE

Decision by Court. This action came to be considered before the Court. The issues have been considered and a decision has been rendered.

IT IS ORDERED AND ADJUDGED that the judgment is in favor of the Defendants and against the Plaintiff.

January 5, 2006

/s/_____
LANCE S. WILSON
Clerk

/s/_____
WAYNE JULIAN
Deputy Clerk

APPENDIX E – ORDER ENTERED DECEMBER 12, 1994

Case No. D88-1238/Department 11
Hon. Scott T. Jordan

**IN THE FAMILY DIVISION
OF THE SECOND JUDICIAL DISTRICT COURT
OF THE STATE OF NEVADA IN AND FOR THE
COUNTY OF WASHOE**

TYRONE DUFF,
Petitioner,

v.

YOLANDA FOSTER, et.al.,
Respondent.

UPON THE ORAL MOTION of Kurt Mausert, Esq., the Court-appointed counsel for the minor children herein, and upon the record to date and for good cause (to wit: Mr. Mausert's relocation to New York State), and with no objection for any other party, it is hereby

ORDERED that Mr. Mausert's motion to withdraw as the counsel for the minor children is hereby granted, and that Mr. Mausert is relieved from any further responsibilities as attorney for said children.

Mr. Mausert has the thanks of the Court for his service in this case.

DATED this 9 day of December, 1994.

/s/_____
Scott Jordan
District Judge

CERTIFICATE OF SERVICE

I certify that on the 13th day of December, 1994, I deposited for mailing in the U.S. Mail in Reno, Nevada, with postage thereon fully prepaid, true and correct copies of the within document, addressed as follows:

A.Stanyan Peck, Esq.
485 W. 5th
Reno, NV 89503

Martin Crowley, Esq.
P.O.Box 415
Reno, NV 89504

/s/ _____
Kurt Mausert, Esq.

APPENDIX F – ORDER STRIKING FUGITIVE DOCUMENT;ORDER DENYING MOTION TO REMOVE RESTRAINING ORDER;ORDER TO RESUBMIT MOTION UPON PROPER SERVICE OF PROCESS FILED MARCH 5, 1998

Case No. D88-1238 & CV90-7020
Depart. No. 11

**IN THE FAMILY DIVISION
THE SECOND JUDICIAL DISTRICT COURT
OF THE STATE OF NEVADA IN AND FOR
THE COUNTY OF WASHOE**

YOLANDA DUFF,
Plaintiff,

vs.

TYRONE GEORGE DUFF,
Defendant.

TYRONE GEORGE DUFF,
Applicant,

vs.

YOLANDA FOSTER,
Respondent.

The Court has reviewed: Defendant's Motion to Remove Restraining Orders filed October 12, 1997; Plaintiff's Opposition to Motion to Remove Restraining Orders, filed October 27, 1997; Defendant's Reply Motion to Remove Restraining Order filed February 11, 1998; Plaintiff's Motion to Strike file February 13, 1998; and all supporting documents on file.

Defendant asserts that he has been the subject of various restraining orders in this action over the past four (4) years which unduly prevent his freedom of movement and ability to engage in business in the Reno, Nevada area. Defendant requests that the Court immediately remove these restraining orders on the basis that they have been issued and renewed against him without due process or a showing that such restraints are warranted. The Conclusions of Law and Order entered July 26, 1993 on page 10 states:

> "Mr. Duff is hereby restrained from coming within five hundred yards (500) of the residence of Yolanda and William Foster, to wit, 1555 Ridgeview Drive #30, Reno, Nevada, or such other places as they may live and their places of employment, and neither he or anyone acting on his behalf shall have any contact with them; that Mr. Duff is further restrained from coming within 500 yards of Washoe County Social Services Department, the offices of any treating therapists for the minor children or the offices/ homes of Dr. Richard Lewis, Kurt Mausert, Esq. or A.Stanyan Peck, Esq."

In subsequent orders, Defendant asserts that he has further been directed to stay away from the minor children's school.

Defendant argues that as long as these restraining orders are in effect, the Court's January 9, 1998 Order confirming Defendant's joint legal custody of the parties minor children, CAMERON and AARON DUFF, the primary purpose of which was to allow Defendant access to the children's school records, will continue to frustrated because Defendant can not set foot upon the school grounds without fear of being held in contempt of Court.

Defendant argues that pursuant to NRS Chapter 33, all of the restraining orders currently in effect should be removed by the Court on the basis that the restraining order renewal expiration times have expired. Defendant further requests that the Court strike from the record Plaintiff's Reply to Opposition for Removing Restraining Order filed February 13, 1998 as a fugitive document pursuant to WDCR 12.

Plaintiff asks this Court to allow the restraining orders to remain in effect because Defendant has shown no signs of attempting to abate his aggressiveness and propensity toward violence, especially as directed against Plaintiff and the individual members of her family.

A moving party in an action must serve all parties to the action. The responding party shall have ten (10) days to respond to the motion, or thirteen (13) days if service is performed by mail. WDCR 12(2). The moving party may serve and file reply pints and authorities within five (5) day period, the matter may be submitted for decision. Any documents filed subsequent to the five (5) day time period the initial Motion without leave of the Court may be considered fugitive documents and stricken from the record. Accordingly, Defendant's request that the Court strike from the record Plaintiff's Reply to Opposition for Removing Restraining Order filed February 13, 1998 is granted. Plaintiff's "Reply" will not be considered in determining those issues now properly before the Court. This case presents the Court with a continuing controversy between a former husband and wife over the custody, support, and visitation of their minor children, CAMERON and AARON DUFF. The litigation dates back to Plaintiff's filing of a Complaint for Divorce on May 2, 1988. Since that time, there have been approximately four hundred sixteen (416) entries in the legal file, almost of which concern the care of the parties' minor children, with each parent setting forth reasons why he or she is the fit person

to have custody of CAMERON and AARON DUFF, or why the other parent fails in fulfilling his or her parenting role.

The police in Nevada, codified at NRS 125.460, is that the best interests of children are generally served by a continuing relationship with both parents and a sharing of parental rights and responsibilities. However, Nevada has also established the overarching rule that the welfare of the minor children is the primary, paramount, and controlling consideration of the Court in all custody controversies. All other matters are subordinate. This is particularly true where, as here, the estrangement of husband and wife beclouds parental judgment with emotion and prejudice and there are numerous allegations of domestic violence and emotionally volatile acts.

The evidence presented throughout these proceedings leads to the conclusions that Defendant's controlling conduct gave rise to the initial TPO and Defendant, as Plaintiff correctly asserts, has shown no signs of attempting to abate or deter his behavior. In 1993, this Court directed Defendant to receive mental health counseling. There is no indication that Defendant has complied with this Court's Orders. Furthermore, since entry of the Restraining Orders at issue here, Defendant has become estranged from his sons as a result of his conduct toward them and Plaintiff. Other than the passage of time, there is no basis to believe that the restraining orders in effect in this case are no longer necessary. Based on the Court's continuing active involvement with this matter, the Court is convinced that the best interest of the minor children require that the Restraining Orders be maintained. Accordingly, Defendant's Motion to Remove Restraining Orders is denied.

Defendant to file a financial declaration within twenty (20) days of entry of that Order. Defendant filed his financial declaration with the Court, but there is nothing contained within the legal file to evidence that it was properly served on Plaintiff. Accordingly, Defendant shall serve a copy of his updated financial declaration on Plaintiff within ten (10) days of the entry of this Order and resubmit the issue of child support for this Court's determination pursuant to the laws of the State of Nevada.

IT IS SO ORDERED.

DATED THIS 3 DAY OF MARCH, 1998.

/s/_____
Scott Jordan
DISTRICT JUDGE

APPENDIX G – ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT FILED AND ENTERED FEBRUARY 21, 2007

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 06-15279
D.C. No. CV-N-05-0131-KJD
District of Nevada (Reno)

TYRONE DUFF,
Plaintiff – Appellant,

v.

MARK GIBBONS; et.al.,
Defendants – Appellees.

DECIDED: February 21, 2007

Before: GOODWIN, LEAVY, and FISTHER,
Circuit Judges

The panel has voted to deny the petition for panel rehearing.

The full court has been advised of the petition for rehearing en banc and no judge has requested a vote on whether to rehear the matter en banc. *See* Fed.R.App.P. 35.

The petition for panel rehearing and the petition for rehearing en banc are denied.

No further filings will be accepted in this closed case.

APPENDIX H – LETTER FROM MARTIN CROWLE, ESQ. TO HON. SCOTT JORDAN, DATED October 10, 1995

American Legal Services
Martin G. Crowley, Esq.

P.O.Box 426
Reno, Nevada 89504
(702) 786-LAWS

October 10, 1995

Hon. Scott Jordan
Dept. 11
Second Judicial District
via hand delivery

Re: Foster v. Duff

Dear Judge Jordan:

Some very alarming matters came to my attention in this case last week and I reported the same to your secretary, Terri. Mr. Peck accused my client, Mr. Duff of being at the children's school in violation of restraining order. At the time that Mr. Peck called, Mr. Duff was several hundred miles from Reno and did not arrive until 4:00 p.m., just in time for the visit with Dr. Evarts.

The next day, after the second visit, Mr. Duff was greeted outside Dr. Evarts office by uniformed Reno Police. They stated that a green sedan with Washington plates was reported stolen and was to be found on that street in Reno. On Mr. and Mrs. Foster knew that my client was driving a green sedan and only they knew it was at that location at that time.

We are requesting that you exercise your powers of the Court and investigate this matter and if you find that the Fosters have filed a false reports and allegations, that you take appropriate measures and sanctions. A request for restraining order will follow.

Sincerely,

/s/_____
Martin Crowley

cc: file, client, Stan Peck, Esq.

APPENDIX I – AFFIDAVIT OF A.STANYAN PECK DATED APRIL 7, 1999

Case No. D88-1238 & CV90-7020
Depart. No. 11

**IN THE FAMILY DIVISION
OF THE SECOND JUDICIAL DISTRICT COURT
OF THE STATE OF NEVADA IN AND FOR
THE COUNTY OF WASHOE**

YOLANDA DUFF,
Plaintiff,
vs.

TYRONE GEORGE DUFF,
Defendant.

TYRONE GEORGE DUFF,
Applicant,
vs.

YOLANDA FOSTER,
Respondent.

State of Nevada
County of Washoe

I, A.Stanyan Peck, hereby swear under the penalty of perjury, that the following assertions are true and correct to the best of my knowledge:

1. That affiant is an attorney licensed to practice in all courts of the State of Nevada and is the former attorney for Yolanda Duff, now known as Yolanda Foster.

2. That affiant represented Ms. Foster for a substantial period of years proceeding August 1996 when affiant was permitted to withdraw as attorney of record.

3. That since affiant's representation of Ms. Foster, affiant has changed firms and all records associated with that representation are contained in a separate building and/or in storage.

4. That the Subpoena Duces Tecum served on the secretary for affiant requests documents which may or may not exist and which would be difficult and/or burdensome to retrieve.

5. That the Subpoena served issued by the Clerk includes a request for documents which would have been offered in support of a restraining order or orders issued long after affiant's withdrawal as attorney of record for Ms. Foster.

6. That affiant has no recollection of any documents ever having been offered to the court in support of any restraining orders and, if so, said documents would have been attached to moving papers.

7. That if affiant had received written communications from Ms. Foster concerning her relationship with Mr. Duff and/or events that had purported occurred between them, those documents would, in affiant's humble opinion, be privileged and not discoverable.

8. That no fees and/or costs associated with copying documents that may exist was provided with the subpoena at the time of service.

Further affiant sayeth naught.

Dated this 7th day of April, 1999.

/s/_____
A.Stanyan Peck

Subscribed and sworn to before me
this 7th day of April, 1999.

/s/_____
Kathleen L. Morris
Notary Public

KATHLEEN L. MORRIS
Notary Public – State of Nevada
Appointment Recorded in Washoe County
No: 93-0592-2 – EXPIRES DEC. 16, 2000

APPENDIX J – DEPUTY DISTRICT ATTORNEY BUFFY JO DREILING'S LETTER, DATED APRIL 19, 1999

Washoe County District Attorney
RICHARD A. GAMMAICK
DISTRICT ATTORNEY

April 19, 1999

Tyrone Duff
P.O.Box 2512
Bellingham, Washington 98225

Re: Subpoena Duces Tecum

Dear Mr. Duff:

I am a Deputy District Attorney assigned to represent Washoe County Department of Social Services. I have received a copy of the subpoena duces tecum in the case Yolanda Duff v. Tyrone George Duff, D88-1238, CV90-7020 which you sent to Michelle Lucier.

Your subpoena duces tecum requests copies of the following documents:

1. Supporting documents;
2. Police reports; and/or
3. Transcript of hearing,

to justify the court order of July 26, 1993 pertaining to the restraining order placed against you on behalf of Michelle Lucier and/or the Washoe County Department of Social Services, and the reinstatement of the restraining order on October 15, 1995 and March 5, 1998 on behalf of Michelle Lucier and/or Washoe County Department of Social Services.

I have reviewed the Washoe County Department of Social Services file pertaining to you, your children, and Ms. Foster (Duff). The file does not contain any of the documents requested by your subpoena duces tecum. Moreover, Ms. Lucier does not maintain a separate file and does not have any of the documents requested.

If you have any questions, please do not hesitate to contact me at (775) 328-3400.

Sincerely,

RICHARD A. GAMMICK
District Attorney

By /s/_____
BUFFY JO DREILING
Deputy District Attorney

APPENDIX K – KURT MAUSERT, ESQ.'S LETTER, DATED JUNE 21, 1999

Kurt Mausert
Counselor at Law

June 21, 1999

Amy Harvey, Clerk of Court
2nd Judicial District Court
Department 11
PO Box 11130
Reno, NV 89520

Re: Case No. D88-1238,
CV90-7020 (Duff v. Foster)

Dear Madam Clerk:

I was served with a Subpoena Duces Tecum in regard to the above-entitled case. No fees for mailing or copying or other witness fees accompanied this Subpoena. It is my understanding that without such fees, the Subpoena violates the appropriate rules under the Nevada Revised Statutes. However, as a courtesy to the court I have looked in my file and also caused my secretary to examine the file (see Affidavit of Ms. Hovious attached hereto). Also, pursuant to applicable Civil Practice Law and Rules in New York State, I affirm under penalty of perjury that I have personally examined the file and have been unable to find the requested documents.

I have not been involved in this case for nearly five years. In addition, my files have been transported from Nevada to the State of New York. It is possible that I never had a copy of the Restraining Orders, and it is also possible that said orders have somehow or other been misplaced in

the file or lost in moving.

I would note that any order from the court that was issued, including the Restraining Orders, would be in the court's file. In addition, such orders would have been served on Mr. Duff. I do not know why Mr. Duff is seeking to Subpoena from my files a document that should be in his and the Court's file.

If Mr. Duff again subpoenas documents from me without complying with the NRS, or uses a subpoena to procure documents more appropriately obtained from the court or his own file, I will be placed in the position of having to file a motion to quash. I will also seek attorney's fees and sanctions in order to compensate me for diverting my time and resources away from my regular practice. By copy of this letter, I am advising Mr. Duff of my position. I am a solo practitioner and cannot afford to have my time taken up by arguably improper requests from Mr. Duff.

Yours truly,

/s/_____
Kurt Mausert

KM/hh
c: Tyrone Duff

376 Broadway, Suit 2, Saratoga Springs, N.Y. 12866
518-587-5700 fax 518-587-0269

AFFIDAVIT

I, Holly Hovious, being more than eighteen years of age and duly sworn deposes and says that the following is true to the best of my knowledge, information, and belief:

On June 18, 1999 I thoroughly searched the ***Duff v. Duff*** file in Kurt Mausert's law office, and I was unable to locate the Order of Protection pertaining to Kurt Mausert.

/s/ _____
Holly Hovious

Sworn to before me
this 21 day of June, 1999.

/s/ _____
Kurt Mausert

Notary Public

Kurt G. Mausert
Notary Public, State of New York
Registration #02MA5062210
Qualified In Saratoga County
My Commission Expires June 24, 2000

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(2)

No. 06-1476

IN THE

SUPREME COURT OF THE UNITED STATES

TYRONE DUFF,
Petitioners,

vs.

STATE OF NEVADA, ET.AL.,
Respondents.

On Petition for a Writ of Certiorari to the
United States Court of Appeals
for the Ninth Circuit

PETITION FOR REHEARING

TYRONE DUFF
P.O.Box 2512
Bellingham, WA. 98227
(360) 752-1775

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IN THE

SUPREME COURT OF THE UNITED STATES

No. 06-1476

TYRONE DUFF,
Petitioners,

vs.

STATE OF NEVADA, ET.AL.,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

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PETITION FOR REHEARING

I. INTRODUCTION

Pursuant to Supreme Court Rule 44.2 petitioner Tyrone Duff petitions the Court for rehearing on its decision entered October 1, 2007, that denied his petition for writ of certiorari and upheld the Ninth Circuit's decision that conflicts with the existing decision by the Second Circuit in *Maestri v. Jutkofsky* on the same matter of 'jurisdiction' and terminated the petitioner's Constitutional and Civil Rights by declaring him a *vexatious litigant*.

II. ARGUMENT

Rehearing is warranted on the Supreme Court's decision, entered October 1, 2007, that upheld the Ninth Circuit's decision that assumed authority outside the territorial boundaries of its office in the State of New York, which is the jurisdiction of the Second Circuit. This indisputably conflicted with the Court's prior decision, entered February 21, 1989 that upheld the existing authoritative decision by Second Circuit on the same important matter of 'jurisdiction' in *Maestri v. Jutkofsky*, 850 F.2d 50, 53 (2nd Cir. 1988)[*28] cert. denied, 489, U.S. 1016, 109 S.Ct. 1132, 103 L.Ed. 2d 193 (1989). *Maestri* roughly analogous to the instant case, where the Court held that the judge did not have absolute immunity because the judge acted in clear violation of all subject matter jurisdiction by causing an arrest of a citizen in a neighboring jurisdiction and makes it clear there is a difference between an action that is 'erroneous' or even in 'excess of jurisdiction' and one that is in the 'clear absence of all jurisdiction' over the subject matter, which absolute immunity is unavailable. See *Atkinson-Baker & Assoc. v. Kolts*, 7 F.3d 1452 at 1454 (9th Cir. 1993); *Mireles v. Waco*, 502 U.S. 9, 12 (1991); *Forrest v. White*, 484 U.S. 227, 228 (1988).

Justices Stevens, Scalia and Kennedy were sitting justices on the Court's prior decision and knew when the Court upheld the Ninth Circuit's decision without overruling *Maestri*, the Court entered two (2) conflicting decision of case law by two (2) Circuit Courts on the same important matter of 'jurisdiction', setting fraudulent case law

and a false precedent that can be cited in deciding similar cases, which substantially effects the integrity and creditability of the Supreme Court of the United States. See *Bulloch v. United States*, 763 F.2d 1115, 1121 (10th Cir. 1985); *Hazel-Atlas Glass Co. v. Hartford- Empire Co.*, 322 U.S. 238, 245-246 (1944).

The Ninth Circuit's decision is a 'usurpation of power' that conferred jurisdiction where none existed (*People ex rel. Gowdy v. Baltimore & Ohio R.R. Co.*, 385 Ill. 86 92 52 N.E. 2d 255 (1943); *Old Wayne Mut. L. Assoc. v. McDonough*, 204 U.S. 8, 27 S.Ct. 236 (1907)), when it permanently enforced a Nevada State Court's blanket restraining order against the petitioner in the State of New York, which conflicts with the existing decision by the Second Circuit on the same important matter of 'jurisdiction' in *Maestri*. See *Tucker v. Outwater*, 118 F.3d 930, 932-933 (2d Cir. 1997); *James v. Borg*, 24 F.3d 20, 24 (9th Cir.), cert. denied, 115 S.Ct. 333 (1994); *Gray v. Raines*, 662 F.2d 569, 571 (9th Cir. 1991); *People v. McCarty*, 94 Ill. 2d 37 (1983); *Cole v. Arkansas*, 333 U.S. 196 (1948).

The Supreme Court upheld the Ninth Circuit's decision that not only upheld its encroachment in the jurisdiction of the Second Circuit but declared the petitioner a *'vexatious litigant'*, barring him from ever exercising his Constitutional Rights to proceed with a legal action provided under federal law to remove the State of Nevada's unlawful restraint against him, now over fourteen (14) years, in the State of New York (*Kelcup v. McManus* (1964) 2d 771, 394 P. 2d 375, 379), which conflicts with the Court's decision, entered February 21,

1989 that upheld the Second Circuit's decision in *Maestri*. See *Board of the County Commissioners of Bryan County, Oklahoma v. Brown*, 520 U.S. 397 (1997); *Adickes v. S.H. Kress & Co.*, 398 U.S. 144 (1970); *42 U.S.C. §1983*. The authority of every tribunal is necessary restricted by the territorial limits of the State in which it is established. Any attempt to exercise authority beyond those limits would be deemed in every other forum, as has been by this court, an illegitimate assumption of power. *Pennoyer v. Neff* 95 U.S. 714 (1877); *Stump v. Sparkman*, 435 U.S. 349 (1978); *King v. Love*, 766 F.2d 962 (6th Cir. 1985); *Ashelman v. Pope*, 793, F.2d 1075 (9th Cir.1986).

This case now calls for an exercise of the Supreme Court supervisory power to compel the Ninth Circuit to act within the jurisdiction of the territorial boundaries of its office and prohibit it from acting outside its jurisdiction and reverse its extrajurisdictional acts in its decision, where it has now encroached in the jurisdiction of the Second Circuit, which conflicts with the Court's decision, entered February 21, 1989 that upheld the existing decision by the Second Circuit on the same important matter of 'jurisdiction' in *Maestri*. See *Rowe v. Fort Lauderdale*, 2002 U.S. App. 885, *19n. 10, 15Fla. Weekly Fed. At C241 n. 10 (11th Cir. 2002). The Court must uphold the Constitution and Rule of Law, without respect to persons and vacate its decision, entered October 1, 2007, as unconstitutional and uphold the Second Circuit's decision in *Maestri*. See *Marbury v. Madison*, 1 Cranch 137 (1803).

It is not the Supreme Court's position to act with respect to persons, but to uphold to the best of its ability at all times in all cases coming before it, the Constitution and the Rule of Law without respect to persons, in order for justice to prevail, foranything less is an obstruction of justice. Should the Supreme Court continue to refuse to uphold the Constitution and the Rule of Law without respect to persons and its own case law in *Maestri*, the petitioner will have no other recourse but to address this entire matter before the House Judiciary Committee, where the geographic and/or territorial boundaries of the jurisdiction of the federal courts can only be changed by an act of Congress.

III. CONCLUSION

Based on the intervening circumstances set forth herein, the petitioner respectfully request that his petition for rehearing be granted.

Respectfully submitted,

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Certification of Counsel (Rule 44.2)

Pursuant to Rule 44.2 of the Rules of the Supreme Court of the United States, I hereby certify that the instant petition for rehearing is restricted to the grounds specific in this paragraph and it is presented in good faith and not for delay.

Dated:

/s/ _____
Tyrone Duff
Counsel of Record for Petitioner